

## Federal Highway Administration, DOT

## § 172.23

(1) Scheduling and attending progress meetings with the consultant and being involved in decisions leading to change orders or supplemental agreements,

(2) Being familiar with the qualifications and responsibilities of the consultant's staff,

(3) Visiting the project and/or consultant's offices on a frequency that is commensurate with the magnitude, complexity and type of work. This includes being aware of the day-to-day operations for Construction Engineering Service contracts, and

(4) Assuring that costs billed are consistent with the acceptability and progress of the consultant's work.

(b) A final performance evaluation report, except for contracts awarded under small purchase procedures shall be prepared by the public employee in responsible charge of the contract and shall be submitted to the State highway agency's contracting office. The report should include, but not be limited to, an evaluation of such items as timely completion of work, conformance with contract cost and the quality of work. A copy of the report shall be sent to the firm for its review and/or comments and any written comments submitted to the contracting agency by the firm shall be attached to the final report.

(c) Contracting agencies should include a clause in engineering contracts requiring the consultant to perform such additional work as may be necessary to correct errors in the work required under the contract without undue delays and without additional cost to the owner. However, in general, a consultant should not be held responsible for additional costs in subsequent related construction resulting from errors or omissions which are not a result of gross negligence or carelessness.

### § 172.15 Alternate procedures.

(a) This is a process whereby the contracting agency can be authorized to substitute its contract review and approval actions for those of the FHWA. Before a contracting agency can operate under the alternate procedures concept, it shall submit procedures to the FHWA that include the following:

(1) A formal request to operate under the alternate procedure concept.

(2) The written procedures, as required by §172.5(b) of this part, it will follow, and

(3) A statement signed by the chief administrative officer of the contracting agency certifying that it will conform with its written procedures, the provisions of this regulation, and all applicable Federal and State laws and administrative requirements.

(b) The alternate procedures and all revisions shall be approved by the FHWA.

(c) The alternate procedures concept may apply to all Federal-aid highway funded contracts.

(d) A copy of the original executed contract and all contract modifications shall be submitted to the FHWA.

## Subpart B—Private Sector Involvement Program

SOURCE: 59 FR 64848, Dec. 16, 1994, unless otherwise noted.

### § 172.21 Purpose and applicability.

(a) The purpose of this subpart is to implement a program to encourage States to contract for engineering and design services with the private sector whenever such contracts would be cost effective.

(b) This subpart applies to all engineering and design services contracts financed with Federal-aid highway funds.

### § 172.23 Evaluation and selection.

(a) When funds are appropriated for this program, the FHWA will invite States to submit applications to participate in the program. The FHWA will use the applications to make the program allocations under the program.

(b) The FHWA will make a comparison of the applicants based on the amount of Federal-aid highway funds each State has expended on contracts for engineering and design services. In assessing the amount of funds a State spent in procuring engineering and design services, the FHWA will also consider the amounts expended by States